

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3099 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHIMANBHAI H PRAJAPATI

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR JF SHAH for Petitioner

MR MUKESH PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

C.A.V. JUDGEMENT

1. The petitioner, a Non-Medical Assistant of the Health and Family Welfare Department of the Government of Gujarat, filed this petition before this court and prayed for the following reliefs:

- (A) Quashing and setting aside the Circular
dt. 25-1-1979 of the second respondent at Ann.
G and the Memorandum of the first respondent dt.

18-12-1979 at Ann.H.

(B) Directing the respondents to prepare the seniority list of the petitioners and persons belonging to Sanitary Inspectors cadre transferred to Leprosy Cadre as per Contentions stated hereinabove and in accordance with law and policy enunciated in Govt. Circulars at Annexures C, D, E hereto.

(C) Directing the second respondent to operate the Seniority list at Ann. F. for the purpose of ordering of promotion to the higher post of Leprosy Supervisor.

(D) Directing the respondents to Cancel the provisional seniority list dt. 29th August, 1979 (Ann.I) issued pursuant to impugned circular at Ann. G. and to prepare the final seniority list as per Contentions contained herein above and/or to restore the seniority list at Ann.F and to regulate all promotions with retrospective effect on that basis and to pay difference in salary and all other consequential benefits on that basis.

2. Under the circular dated 25th January, 1979, annexure 'G' the second respondent laid down the principles for the purpose of determination of the seniority list of the employees in the cadre of Leprosy. As per the aforesaid circular, the persons belonging to Sanitary Inspectors' cadre who came on transfer after exercising option and expressing willingness in the circumstances set out therein are to be given the benefit of their past service in the cadre of Sanitary Inspectors for the period between 1965 to 15th November, 1975 for the purpose of seniority in the Leprosy cadre. The principle aforesaid laid down by the respondent no.2 under its circular dt. 25th January, 1979 was approved by the respondent no.1 vide its memo dated 18th December, 1979, annexure 'H'. Both these annexures 'G' and 'H' have been challenged by the petitioner in this Special Civil Application.

3. The respondent no.2 published a provisional seniority list of the employees of the Leprosy cadre under its order dated 9th August, 1978 in which the position has been shown as on 1-6-1978. A copy of this order has been submitted by the petitioner as annexure 'F'. Another provisional seniority list has been published of this cadre by the respondent no.2 under its order dated 29th August, 1979 annexure 'I' in pursuance

to the circular dt.25th January, 1979 as approved by the respondent no.1. vide its memo dt. 18th December, 1979. In this provisional seniority list, the petitioner has been shown junior to many of the persons who were shown junior to him in the earlier provisional seniority list, annexure 'F'. The petitioner has admitted that he submitted his objections to the provisional seniority list published vide circular dt. 29th August, 1979 on 29th September, 1979, 20th February, 1981, 22nd September, 1981, 13th February, 1982 and 8th April, 1982. It has further been mentioned by the petitioner that the respondent no.2 on the basis of the provisional seniority list annexure 'I' made the promotion of 20 Non-Medical Assistants under its order dated 21st June, 1982. The petitioner has made a grievance that all those 20 persons who have been given the promotion under the order dt. 21st June, 1982 though have been shown senior to him in the seniority list annexure 'I', but those were shown junior to him in the earlier provisional seniority list annexure 'F'. The petitioner has challenged the provisional seniority list, annexure 'I' dt. 29th August, 1979. Annexure 'J' the order dated 21st June, 1982 under which the 20 persons ,junior to the petitioner who have been given the promotion, has not been challenged by him in this Special Civil Application.

4. The learned counsel for the petitioner submitted the written submissions and therein raised many points on the merit of the case, but I do not consider it appropriate to go on the questions raised on merits of the case, as in my opinion, this Special Civil Application deserves to be dismissed only on the ground of nonjoinder of necessary parties as well as on the ground that it is premature. The seniority list annexure 'I' is admittedly a provisional seniority list against which the petitioner has filed the objections. The provisional seniority list is not final and unless that list is finalised, the same cannot be challenge before this Court. It is true that the respondent no.2 has acted upon the provisional seniority list, but merely on this ground, it cannot be said that the petitioner has acquired any right to challenge the provisional seniority list. The date in between the publication of seniority list dt. 29th August, 1979 and the date of promotion dt. 21st June, 1982 creates doubt in the mind of the court that the objections of the petitioner would not have been decided and that the provisional seniority list would not have been finalised. It is true that the respondents have also not come up with a case that the provisional seniority list has been finalised, but the writ petition filed by the petitioner against the provisional seniority

list is premature. The respondents could have acted upon the provisional seniority list, but on this ground alone, it cannot be said that it has become final. Earlier also, it is not in dispute that the provisional seniority list annexure 'F' against which the petitioner had no objection has been acted upon and the promotion has been made of the persons therefrom. It was the duty of the petitioner to state before this Court that the provisional seniority list is finalised or not finalised so far. The petitioner has not brought on record whether this list has been finalised or not. Be that as it may. This writ petition is premature and only direction can be given by this court is to finalise the provisional seniority list annexure 'I' after considering the objections filed by the petitioner.

5. There is yet another ground on the basis of which this Special Civil Application deserves to be dismissed. The petitioner has not impleaded all those persons over whom he claims his seniority in the provisional seniority list, annexure 'I'. Not only this, but those persons who have been promoted on the basis of their seniority in the provisional seniority list, annexure 'I' has also not been impleaded as party. Any decision if given by this Court in favour of the petitioner, behind the back of those persons who are in the facts and circumstances of this case, necessary party, it will adversely affect their right of seniority and consequential right of their promotion. It is a case where the persons have been promoted, and the petitioner has not challenged the promotion of those persons though he has challenged the seniority, and as such, the prayer made by the petitioner in this writ petition cannot be accepted behind the back of those persons. In case, the claim of the petitioner is accepted then there may be possibility of the reversion of those persons who have admittedly been promoted on the basis of provisional seniority list annexure 'I' and that promotion order has not been challenged by the petitioner in this Special Civil Application. This writ petition suffers from the defect of nonjoinder of necessary party and the same deserves to be dismissed only on this ground.

6. In the result, this Special Civil Application fails and the same is dismissed only on the ground that it is premature and on the ground of non joinder of necessary parties. Rule discharged. Interim relief, if any granted by this court stands vacated.

7. Before parting with this case, I consider it appropriate to observe that in case the provisional

seniority list, annexure 'I' dated 29th August, 1979 of the Leprosy cadre is not finalised so far, then the same may be finalised after considering the objections submitted by the petitioner. It should be done expeditiously, say within a period of four months from the date of receipt of certified copy of this order. It is further made clear that the dismissal of this writ petition will not come in the way of the petitioner to challenge the finalised seniority list published by the respondent no.2, in appropriate forum available against the same, if he felt aggrieved of the same.

zgs/-